

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.8360 of 2003

Digambar Jain Boarding,
Kolhapur.

Petitioner

Vs.

Shankar Ganpat Dhavale
since deceased by his LRs:
(a) Smt.Mangal Shankar Dhavale & ors. Respondents

Mr.N.J.Patil for petitioner.
Mr.P.D.Dalvi for Resp.Nos.1A to 1C.

CORAM: B.H.MARLAPALLE,J.

July 11, 2006.

P.C.

. Heard Mr.Patil, the learned counsel for the
petitioner-plaintiff and Mr.Dalvi, the learned
counsel for Respondent Nos.1A to 1C.

. Rule. Mr.Dalvi waives service for Respondent
Nos.1A to 1C. As per the bailiff's report Respondent
No.2 is not traceable on the given address as at
present.

. The petition is taken up for final hearing
forthwith by noting the fact that RCS No.681 of 1984
is still pending for trial and the impugned order has
been passed on 24/11/1993 and this petition is
waiting for admission since then (initially as Civil

Revision Application).

. The petitioner-plaintiff had filed an application at Exhibit 55 so as to bring on record the LRs of Defendant No.1, on or about 20/1/1993 and the said defendant had died on 28/2/1992. It appears that details of LRs sought to be brought on record were not furnished and, therefore, the plaintiff filed another application at Exhibit 56 giving all such details. By the impugned order dated 24/11/1993 both these applications came to be rejected by the trial Court solely on the ground that there was delay and good and sufficient reasons were not made out to condone the delay.

. The trial of pending Suit cannot be so lightly defeated merely on such hypertechnical issues. Even if the decree is passed the LRs sought to be brought on record would have a right to defeat the decree in the execution proceedings by way obstruction and even otherwise the decree would not be binding on them. In the interest of justice it was, therefore, necessary that the LRs of the defendant were brought on record and ends of justice would have been met by imposing costs on the plaintiff for the delay caused

in submitting the application as well as incomplete application.

. Hence the petition is allowed and the impugned order dated 24/11/1993 is hereby set aside subject to payment of costs quantified at Rs.2000/-. The cost amount to be deposited with the trial Court within a period of four weeks from today and the defendants will be at liberty to withdraw the same.

. The trial of the Suit is hereby expedited.
Rule made absolute accordingly.

(B.H.MARLAPALLE,J.)